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**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON  
U.S. COURT OF APPEALS**

CARY PICKETT,

Petitioner - Appellant,

v.

SHERMAN HATCHER, Warden,

Respondent - Appellee.

No. 03-15104

D.C. No.  
CV-01-00179-LRH/RJJ

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Nevada  
Larry R. Hicks, District Judge, Presiding

Submitted November 3, 2003\*\*  
San Francisco, California

Before: THOMPSON, TROTT, and CALLAHAN, Circuit Judges.

Petitioner Cary Pickett appeals the district court's dismissal of his 28 U.S.C.  
§ 2254 habeas petition on procedural default grounds. We have jurisdiction under

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

\*\* This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

28 U.S.C. § 2253, and review the dismissal of his petition de novo. Moran v. McDaniel, 80 F.3d 1261, 1268 (9th Cir. 1996).

Pickett's claims were procedurally defaulted based on his failure to file a timely post-conviction petition in state court. The Nevada statute of limitations constituted an independent and adequate state ground precluding habeas review. See Id. at 1269-70; Nev. Rev. Stat. 34.726. Because Pickett did not file his petition "within 1 year after entry of the judgment of conviction," it was untimely. Nev. Rev. Stat. 34.726. Additionally, he has not shown that he had sufficient cause and prejudice to overcome the default. See Coleman v. Thompson, 501 U.S. 722, 750 (1991). Thus, we affirm the district court's dismissal of his habeas petition.

**AFFIRMED**